Datuk Bandar Kuching Utara v Kuching Plaza Sdn Bhd & Ors

HIGH COURT (KUCHING) — SUIT NO 22–243 OF 1998–III (I)
IAN CHIN J
31 JANUARY 2001

Civil Procedure *— Pleadings — Amendment of statement of claim — Application to strike out amended statement of claim — Whether there is a reasonable cause of action against all the defendants — Whether there is a common interest concerning and affecting all the defendants — Local Authorities Ordinance 1996 (Cap 20) & Rules of the High Court 1980 O 15 r 12*

The first defendant was the registered owner of a shopping complex ('the property'). The plaintiff claimed against the first defendant for the rates due in respect of the property. The first defendant contended that they were not an 'owner' within the meaning of the Local Authorities Ordinance 1996 (Cap 20) as to be liable to pay as it had subdivided the property and sold them to various purchasers who were under the sale agreements liable to pay the rates. The plaintiff then applied for those purchasers to be added as defendants to the suit and that four of them be appointed to present all the named purchasers. There was also an application to amend the statement of claim to claim that the first defendant and/or the added defendants were all liable to pay the rates. The applications were granted. The third, fourth and fifth defendants apply to have the amendment struck out on the ground that there was no reasonable cause of action against them. Their applications were dismissed by the deputy registrar and hence this appeal.

Held, dismissing the appeal:

(1) It is arguable whether a purchaser of a lot in a shopping complex is liable to pay the rates even though the purchaser may not be the registered owner since a purchaser may still qualify as a person who is 'receiving rent of the premises' or a person having 'control' of a holding. As for the amount which each purchaser may be liable, that was a question going into the merit of the claim of the plaintiff which should not prevent the adding of the defendants as parties (see p 14A, B).

(2) There could not be any valid objection to the adding of the said defendants since the conditions for joining laid down by O 15 r 6 of the Rules of the High Court 1980 ('RHC') had been satisfied as the joinder or adding of the defendants will ensure that all matters in dispute will be effectually and completely determined and adjudicated upon (see p 14D).

(3) The common interest in this case was the liability of each of the purchasers to pay the rates and the amount payable. A decision on the matter involves the interpretation of the Ordinances concerned and affects all the purchasers. There were numerous

purchasers in this case. Therefore the conditions for a representative action laid down by O 15 r 12 of the RHC were satisfied (see p 15C).

[**Bahasa Malaysia summary**

Defendan merupakan pemilik berdaftar sebuah pusat membeli-belah ('harta tersebut'). Plaintif telah menuntut terhadap defendan untuk kadaran harta tersebut. Defendan pertama menyatakan bahawa mereka bukan merupakan 'pemilik' seperti yang dikatakan di dalam Ordinan Pihak Berkuasa Tempatan 1996 (Cap 20) dan oleh itu tidak perlu membayar kerana mereka telah memecah bahagi harta tersebut dan telah menjualkannya kepada pembeli-pembeli dibawah perjanjian jual beli yang sepatutnya membayar kadaran tersebut. Plaintif kemudiannya telah memohon supaya pembeli-pembeli tersebut dijadikan defendan-defendan dan memohon supaya empat orang daripada mereka dijadikan wakil kepada semua pembeli. Plaintif juga telah memohon untuk meminda pernyataan tuntutan untuk menuntut supaya defendan dan/atau defendan-defendan tambahan dikehendaki membayar kadaran tersebut. Permohonan tersebut dibenarkan. Defendan ketiga, keempat dan kelima memohon supaya pindaan tersebut dibatalkan oleh kerana tiada kausa tindakan yang munasabah terhadap mereka. Timbalan pendaftar telah menolak permohonan tersebut dan defendan-defendan merayu.

Diputuskan, menolak rayuan tersebut:

(1) Adalah dipertikaikan sama ada pembeli sesebuah lot dalam sebuah pusat membeli-belah dikehendaki membayar kadaran harta walaupun pembeli tersebut bukan merupakan pemilik berdaftar, memandangkan pembeli mungkin layak menjadi seorang yang 'menerima sewa bagi premis' ataupun seorang yang mempunyai 'kawalan' ke atas suatu pemegangan. Bagi jumlah wang yang dikehendaki dibayar oleh setiap pembeli, ini bergantung kepada merit tuntutan plaintif yang tidak sepatutnya menghalang defendan daripada dimasukkan sebagai pihak (lihat ms 14A–B).

(2) Tiada bantahan yang sah kepada pemasukkan defendan-defendan tersebut memandangkan syarat-syarat percantuman yang diperuntukan oleh A 15 k 6 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT') telah dipenuhi kerana percantuman atau penambahan defendan-defendan akan memastikan bahawa segala perkara yang dipertikaikan dapat diselesaikan dan dihukumkan dengan berkesan dan sempurna (lihat ms 14D).

(3) Kepentingan yang am di dalam kes ini merupakan liabiliti semua pembeli untuk membayar kadaran harta dan jumlah yang perlu dibayar. Keputusan perkara tersebut melibatkan tafsiran ordinan-ordinan yang terlibat dan akan melibatkan semua pembeli.

Terdapat ramai pembeli di dalam kes ini. Oleh itu, syarat-syarat untuk tindakan perwakilan seperti yang diperuntukkan oleh A 15 k 12 KMT telah dipenuhi (lihat ms 15C).

Notes

For cases on amendent of statement of claim, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3458–3460.

Cases referred to

Smith v Cardiff Corp [1954] 1 QB 210 (refd)

Legislation referred to

Local Authorities Ordinance (Cap 117)
Local Authorities Ordinance 1996 (Cap 20)
Rules fo the High Court 1980 O 15 r 6, r 12

Supian Tarmizi (Attorney General's Chambers) For the plaintiff.
Robert Pang (*Tang & Partners*) for third and fifth defendants.
Mohamad Ivan (*Hamzah & Ong*) for the fourth defendant.

Ian Chin J:. The plaintiff is a corporation solely established under the City of Kuching North Ordinance, and is empowered under the law to collect rates due by property owner. The defendant, Kuching Plaza Sdn Bhd ('the first defendant'), is the registered owner of a shopping complex called the Kuching Plaza. The Plaintiff's claim against the first defendant is for the sum of RM2,280,060.93, for rates due in respect of the said property for the years from 1989 to 1998, and for RM677,661.13 for fees for non payment of rates. The first defendant contended that: (1) it are not an 'owner' within the meaning of the Local Authorities Ordinance as to be liable to pay, as it had subdivided the property into 155 parcels and sold them to various purchasers (which are named in the defence) who are under the sale agreements liable to pay the rates. Under those agreements, the purchasers are liable to pay rateably accordingly to a formula worked out in the agreements. The defendant further contended that the levy is 'extortionate and/or unjustifiable, and/or punitive and/or arbitrarily levied'. The plaintiff then applied for those purchasers 'to be added as defendants to this Suit' and that four of them, Wung Wei Kee ('the second defendant'), Datuk Sim Kheng Lung ('the third defendant'), Anna Wee Chiak Sek ('the fourth defendant') and Wong Yik Ka ('the fifth defendant') be appointed to represent all the named purchasers. There was also an application to amend, among others, the statement of claim to claim that the first defendant and/or the added defendants are all liable to pay the rates and fees. The applications were granted. The third, fourth and fifth defendants apply to have the amendment struck out with costs because they contended that there is no reasonable cause of action against them or that the claim was scandalous, frivolous or vexatious or an abuse of the process of court. Their applications were dismissed by the deputy registrar and hence this appeal.

A The arguments in this matter call for an answer to the question of (1) who is liable to pay the rates, and (2) the amount they are liable to pay. Since the rates fall due under different years, the law existing during the period concerned has to be examined. The Local Authority Ordinance (Cap 117) was in force until it was replaced in 1998 by the Local Authorities Ordinance 1996 (Cap 20). Under the Cap 117 Ordinance, the liability to B pay the rates was imposed on 'the person who is the owner of the property for the time being'. 'Owner' was defined this way:

> 'owner', when used in relation to any premises means the registered proprietor of such premises, or a registered co-proprietor thereof, or the person for the time being receiving the rent of such premises, whether on his own account or C as agent or trustee for any other person, or as receiver, or, in the case in which there is no registered proprietor or such other person, the person for the time being in lawful possession of such premises;

This definition was replaced on 27 May 1989 by the following:

> 'owner'
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> D (a) in relation to any land or building, means the registered proprietor of the land as defined in the Land Code and, if in the opinion of the local authority the registered proprietor cannot be traced, the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if such E premises were let to a tenant;
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> (b) in the case of subdivided buildings, includes the management corporation and any subsidiary proprietor: the expressions 'management corporation' and 'subsidiary proprietor' shall have the meanings assigned to them in the Strata Titles Ordinance, 1974;

F The Cap 117 Ordinance was replaced by the said Cap 20 Ordinance (Local Authorities Ordinance 1996) which came into force on 1 January 1998 and the definition was again amended, viz:

> 'owner'—
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> (c) in relation to any holding, means the registered proprietor of the land as defined in the Land Code and, if in the opinion of the local authority the G registered proprietor cannot be traced, the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if such premises were let to a tenant and includes an occupier;
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> H (d) in the case of subdivided buildings, includes the management corporation and any subsidiary proprietor: the expressions 'management corporation' and 'subsidiary proprietor' shall have the meanings assigned to them in the Strata Titles Ordinance, 1974;

As for 'occupier', which is added to the definition of 'owner', it is defined in the following manner:

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> 'occupier' means the person in occupation of a holding or having the charge, management or control thereof either on his own account or as agent of another person, but does not include a lodger;

So, it is arguable whether a purchaser of a lot in a shopping complex is liable to pay the rates even though the purchaser may not be the registered owner, since a purchaser may still qualify as a person who is 'receiving rent of the premises' or a person having the 'control' of a holding, though it may be difficult to argue that the purchaser is 'a subsidiary proprietor' within the meaning of the Strata Titles Ordinance 1974 since the strata titles had not been issued yet. It must be emphasized that the court here is not required to make any concrete finding as to whether a purchaser will definitely be liable, but only whether the point is arguable. In my view it is. As for the amount which each purchaser may be liable, that is a question going into the merit of the claim of the plaintiff which should not prevent the adding of the defendants as parties even though it may appear atrocious that a purchaser of a unit is sued for the rates due on all the units in the shopping complex. What the plaintiff is doing is also to claim in the alternative against the added defendants in case their claim against the first defendant fails. Unless the added defendants are added now, the plaintiff will have to relitigate on the same issue by taking another action when their action against the first defendant fails. There cannot be any valid objection to the adding of the said defendants since the conditions for joining, laid down by O 15 r 6 of the Rules of the High Court 1980 ('RHC') have been satisfied as the joinder or adding of the defendants will ensure that all matters in dispute will be effectually and completely determined and adjudicated upon. A decision on the questions raised in this case will affect every single purchaser of the shopping complex, since common questions of law and fact will arise. This brings me to the question of the appropriateness of the added defendants defending on behalf of all the other purchasers. This calls for a consideration of O 15 r 12 of the RHC.

A B C D E F G H I

12 Representative proceedings (O 15 r 12)

(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in r 13, the proceedings may be begun, and, unless the court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all or all except one or more, of those person in the proceedings; and where, in exercise of the power conferred by this paragraph, the court appoints a person not named as a defendant, it shall make an order under r 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such

application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Now, the common interest in this case is, as mentioned earlier, the liability of each of the purchasers to pay the rates and the amount payable. A decision on the matter involves the interpretation of the ordinances concerned and affects all the purchasers. There are numerous purchasers in this case. Therefore, the conditions for a representative action laid down by O 15 r 12 of the RHC are satisfied. But it was contended that the consent of the added defendants and of all the other purchasers as required before the added defendants could represent them. For this proposition, Mr. Robert Pang, learned counsel for the third and fifth defendants referred to *Smith v Cardiff Corp* [1954] 1 QB 210 which does not deal with the point of consent and therefore did not decide on whether consent was necessary. Learned counsel had also cited other authorities which I will not bother mentioning since they do not support the proposition of law argued. The argument is so obviously untenable. To uphold the contention would render the court's discretion conferred by O 15 r 12 of the RHC completely incapable of exercise, since it would be dependent entirely on the whims of the parties concerned. The rules also do not impose such a requirement. There is therefore no merit in this argument. The same also applies to the fourth defendant's case.

For the reasons stated, the appeals of the third, fourth and fifth defendants are dismissed with costs to the plaintiff.

Appeal dismissed.

Reported by Jafisah Jaafar